Filed 5/4/12 In re Rene A. CA2/4

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re RENE A., a Person Coming Under the Juvenile Court Law. _____ THE PEOPLE, Plaintiff and Respondent, v. RENE A., Defendant and Appellant.	B229054 (Los Angeles County Super. Ct. No. KJ35552)

APPEAL from an order of the Superior Court of Los Angeles County, Phyllis Shibata, Commissioner. Affirmed.

Laini Millar Melnick, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Paul M. Roadarmel, Jr. and Adana M. Ali, Deputy Attorneys General, for Plaintiff and Respondent.

_____

Minor Rene A. appeals from an order declaring him a ward of the juvenile court under Welfare and Institutions Code section 602. He argues that the juvenile court erred in denying his motion for dismissal under Welfare and Institutions Code section 701.1 because the prosecution's evidence was insufficient to sustain the allegation that he committed assault with a deadly weapon when he threw a chair at his mother. He also argues that the evidence as a whole was insufficient to support this allegation. We affirm.

FACTUAL AND PROCEDURAL SUMMARY

On August 29, 2010, Officer Ruth Flores and her partner responded to a domestic disturbance at minor's home. At the time, minor was 13 years old. Minor's mother, who had called the police, appeared distraught and had food in her hair. Mother told Officer Flores that she and minor argued because he refused to help her clean the kitchen. She said that minor cursed and threw a chair and a bowl of hot food at her. Specifically, mother said minor threw the chair towards her chest, and she deflected it with her right arm. The officer could see, and later photographed, spilled food and a broken chair on the floor by the kitchen area. She also photographed what appeared to be small bruises on mother's arm and chest. In the officer's estimation, the unbroken center piece of the chair weighed eight to 10 pounds. Mother told the officer that she was afraid of minor, who was a gang member, and she wanted to press charges. The officers arrested minor as he was trying to jump out of a window.

A petition filed on August 31 included allegations of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) and resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).

At the adjudication hearing on September 23, the prosecution called mother and Officer Flores. For the most part, mother testified that she did not remember the incident or what she told the officers about it. She confirmed that minor was upset and threw a bowl and a chair. But she refused to say he threw the bowl and the chair at her. She testified the kitchen was small and was connected to the living room. Minor was in the

kitchen, but mother could not remember if she was in the kitchen or the living room. Mother admitted she was not standing "too far" from minor. From her testimony, the court estimated minor and mother could have been as close as three feet apart.

Officer Flores testified about mother's statements to her and about her own observations of the scene. Specifically, she testified to mother's statement that minor had thrown a chair towards her chest, and she had deflected it with her right arm. After the prosecution rested, minor made a motion to dismiss on the ground that the bowl was not a deadly weapon, and there was no evidence how the chair was thrown. The court denied the motion.

Minor's sister testified for the defense. She claimed to have been present during the incident. According to her, mother and minor were on two different sides of the living room: mother was standing in the living room by the front door while minor was by the refrigerator in the kitchen. After minor's sister pointed to objects in the courtroom, the court estimated the claimed distance between mother and minor was some 38 feet. Minor's sister testified that the chair minor threw hit the kitchen door and fell in the living room. The chair landed an estimated eighteen feet from him, but nowhere near mother, who was still by the front door.

The court did not credit the testimony of minor's sister. It found the allegations in the petition true beyond a reasonable doubt but declared the assault with a deadly weapon a misdemeanor. Minor was declared a ward of the court and placed home on probation.[1] This appeal followed.

DISCUSSION

Appellant argues that the court should have granted his motion under Welfare and Institutions Code section 701.1 and dismissed the Penal Code section 245, subdivision (a)(1) count. He claims that at the time the prosecution rested, the evidence was

[1] In November 2010, after minor violated the conditions of his probation, the court ordered suitable placement.

insufficient to show how minor threw the chair or how close he stood to mother. We disagree.

In ruling on a motion to dismiss under Welfare and Institutions Code section 701.1, the juvenile court is required "'to weigh the evidence, evaluate the credibility of witnesses, and determine that the case against [minor] is "proved beyond a reasonable doubt before [minor] is required to put on a defense."'" (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.) We review the denial of such a motion under the substantial evidence standard. (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.) We view the state of the evidence at the time of the motion in the light most favorable to the prosecution and may reverse only if there is no substantial evidence under any hypothesis to support the juvenile court's finding that the petition was true beyond a reasonable doubt. (*Ibid.*) We do not reweigh the evidence or judge the credibility of witnesses. (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1373.)

Penal Code section 245, subdivision (a)(1) penalizes the commission of an assault "with a deadly weapon or instrument other than a firearm." An object not inherently deadly may be used as a deadly weapon if used in such as a manner as to be capable of producing, and likely to produce, death or great bodily injury. (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028–1029.) Since assault is a general intent crime, it only requires an intentional act and awareness of facts "that would lead a reasonable person to realize that a battery would directly, naturally, and probably result" from it. (*People v. Wyatt* (2010) 48 Cal.4th 776, 779; see also *People v. Williams* (2001) 26 Cal.4th 779, 790.) But "mere recklessness or criminal negligence" is not enough. (*Id.* at p. 788.) Neither physical contact nor injury is required, but the extent and location of any actual injuries may be relevant. (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086.)

Minor's sole argument is that the prosecution offered no evidence how he threw the chair or where he stood in relation to mother. Without such evidence, he claims his throwing the chair was at the most reckless. He does not argue that the chair was not a deadly weapon.

Minor did not object to Officer Flores's testimony about the statements mother made after the incident. Under Evidence Code section 1235, a witness's prior inconsistent statements are admissible not only for impeachment, but also for their truth. (*People v. McKinnon* (2011) 52 Cal.4th 610, 672.) Mother's statements to Officer Flores that minor threw the chair at her chest, and she used her right arm to protect herself from it, were admissible for their truth in light of her inconsistent testimony at the adjudication. Although mother vacillated about their relative positions to each other, she testified twice that minor did not stand "too far" from her. The distance she indicated was three feet, in the court's estimation. Thus, at the time of the motion to dismiss, there was substantial evidence that minor threw the chair at mother at close range.

The officer testified that the chair weighed at least eight to 10 pounds, and there was evidence that it had broken. While mother testified that the legs on all her chairs were loose, the court could infer that the chair's legs broke off from the force with which it was thrown.

Officer Flores testified that she photographed the injuries mother claimed to have received. Minor's counsel disputed that the small bruise on mother's arm and the pimple-like red mark on her chest that the officer photographed were consistent with being hit with a chair. But the crime of assault does not require actual injury. (*People v. Beasley*, *supra*, 105 Cal.App.4th at p. 1086.) Officer Flores's testimony was substantial evidence that immediately after the incident mother claimed to have been hit by the chair, whether or not the chair left the marks on her chest and arm that the officer photographed.

We, therefore, disagree with minor's representation that the prosecution presented no evidence indicating how or how far the chair was thrown. On the contrary, the prosecution's evidence indicated that minor threw a chair weighing eight to 10 pounds at mother's chest at close range with sufficient force to break the chair, and mother managed to deflect the chair with her arm. The court could conclude from this evidence that a reasonable person would have realized "a battery would directly, naturally, and

probably result" from throwing the chair. (*People v. Wyatt, supra*, 48 Cal.4th at p. 779.) The throwing of the chair, thus, cannot be characterized as merely reckless.

Minor argues alternatively that the evidence as a whole was insufficient to sustain the allegation of assault with a deadly weapon. The only evidence offered by the defense was the testimony of minor's sister, which the juvenile court did not find credible. Although we review the entire record for substantial evidence, we do not reevaluate the juvenile court's credibility determinations. (*In re Ryan N., supra*, 92 Cal.App.4th at p. 1373.) We determine only whether "on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, which will support the decision of the trier of fact." (*Ibid*.) Since we conclude that substantial evidence supported the prosecution's case, it follows that there was substantial evidence on the entire record as well to support the juvenile court's finding that minor committed an assault with a deadly weapon.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.